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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 101126591-1705-02]

RIN 0648–XZ58

Endangered and Threatened Species; Proposed Threatened Status for Distinct Population Segments of the Bearded Seal

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; 6-month extension of the deadline for a final listing determination.

SUMMARY: We, NMFS, announce a 6-month extension of the deadline for a final determination regarding the December 10, 2010, proposed rule to list two distinct population segments (DPS) of the bearded seal (Erignathus barbatus) as threatened species under the Endangered Species Act of 1973, as amended (ESA). We are taking this action because there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing rule. An additional 6 months will allow us to solicit additional data, evaluate and assess special independent peer review of those aspects of the status review report over which there is substantial disagreement, and better inform our final determination on the proposed listing rule.

DATES: We intend to reopen the public comment period to accept comment on the special independent peer review report when it becomes available. We will soon announce the dates of the new public comment period in the Federal Register. A final determination on this proposed

listing action will be made no later than June 10, 2012.

ADDRESSES: The proposed rule, status review report, and other materials relating to this proposal can be found on the Alaska Region web site at: <http://alaskafisheries.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Tamara Olson, NMFS Alaska Region, (907) 271–5006; Kaja Brix, NMFS Alaska Region, (907) 586–7235; or Marta Nammack, Office of Protected Resources, Silver Spring, MD (301) 427–8469.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2008, we initiated status reviews of bearded, ringed (*Phoca hispida*), and spotted seals (*Phoca largha*) under the ESA (73 FR 16617). On May 28, 2008, we received a petition from the Center for Biological Diversity to list these three species of seals as threatened or endangered under the ESA, primarily due to concerns about threats to their habitat from climate warming and loss of sea ice. The Petitioner also requested that critical habitat be designated for these species concurrent with listing under the ESA. In response to the petition, we published a 90-day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (73 FR 51615; September 4, 2008). Accordingly, we proceeded with the status reviews of bearded, ringed, and spotted seals and solicited information pertaining to them.

Following completion of a status review report and 12-month finding for spotted seals in October 2009 (74 FR 53683, October 20, 2009; see also, 75 FR 65239; October 22, 2010), we established Biological Review Teams (BRT) to prepare status review reports for bearded and ringed seals. The status review report of the bearded seal is a peer-reviewed compilation of the best scientific and commercial data available concerning the status of the species, including the

past, present, and future threats to this species. After the status review report was completed by the BRT (Cameron et al., 2010), on December 10, 2010, we made a 12-month finding and proposed to list the Beringia DPS and the Okhotsk DPS of the Erignathus barbatus nauticus subspecies of bearded seals as threatened (75 FR 77496). No listing action was proposed for the Erignathus barbatus barbatus subspecies. We published our 12-month finding for ringed seals as a separate notification concurrently with this finding (75 FR 77476; December 10, 2010).

The proposed rule to list the Beringia and Okhotsk DPSs of bearded seals announced a 60-day comment period to close on February 8, 2011. On February 8, 2011, we extended the comment period 45 days to March 25, 2011 (76 FR 6755). Three public hearings were held in Alaska in Anchorage, Barrow, and Nome (76 FR 9734, February 22, 2011; 76 FR 14883, March 18, 2011).

In accordance with our July 1, 1994, Interagency Cooperative Policy on Peer Review (59 FR 34270), we requested the expert opinion of four independent scientists with expertise in seal biology and/or Arctic sea ice and climate change regarding the pertinent scientific data and assumptions concerning the biological and ecological information used in the proposed rule. The purpose of the review was to ensure that the best biological and commercial information was used in the decision-making process, including input of appropriate experts and specialists. We received comments from three of these reviewers.

There was significant disagreement among the peer reviewers regarding the magnitude and immediacy of the threat posed to the Beringia DPS by the projected changes in sea ice habitat. This disagreement was also evident in public comments received. A number of commenters disputed the assessment of the threat posed to the Beringia DPS by the projected habitat changes, including the State of Alaska, certain Tribal governments and Alaska Native

organizations, and Canada's Department of Fisheries and Oceans. We have considered these comments, and we find that substantial disagreement exists concerning the sufficiency or accuracy of the analysis of model projections of future sea ice cover and related impacts to the Beringia DPS, and the magnitude and immediacy of the threats posed to this population by the projected habitat changes.

Extension of Final Listing Determination

The ESA, section 4(b)(6), requires that we take one of three actions within 1 year of a proposed listing: (1) finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data.

In consideration of the disagreement related to the model projections and analysis of future sea ice habitat in the range of the Beringia DPS, we are extending the timeline for the final determination by an additional 6 months (until June 10, 2012) to resolve the disagreement. We believe that the solicitation of additional data through special independent peer review of this aspect of the status review report will better inform our final determination on the proposed listing rule and will address the disagreement. We are therefore conducting peer review in accordance with our Policy on Peer Review, and we will provide an opportunity for the public to comment on the peer review report. The additional 6 months will allow time for us to evaluate and assess the special independent peer review comments and make the peer review report available for comment. We do not anticipate that this additional time will appreciably impact either of the two DPSs of bearded seals we proposed to list as threatened.

The reopening of the public comment period will be announced in the Federal Register when the availability of the peer review report compiling the special independent review comments is known. At that time, instructions for obtaining a copy of the peer review report will also be announced.

Authority: 16 U.S.C. 1531 et seq.

Dated: December 6, 2011.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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